

**PEMBENAAN KENG TING
(SABAH) SDN. BHD.**

v.

SELOGA JAYA SDN. BHD.

HIGH COURT, KUALA LUMPUR
TUAN EE CHIN SENG JC
[CIVIL SUIT NO. S1-22-526-91]
19 JANUARY 1994

ARBITRATION: Stay of proceedings - Section 6 Arbitration Act 1952 - Application by defendant for stay of proceedings of writ of summons filed by plaintiffs pending reference to arbitration - Whether defendant is ready and willing to do everything necessary to commence arbitration - "Step taken in the proceedings" - Whether filing affidavit in opposing injunction proceedings and raising preliminary objection as to Court's jurisdiction is a "step taken in the proceedings" by defendant - Waiver of arbitration clause - Intention of defendant to stay proceedings - Whether bona fide intention - Delay in application for stay.

This was an appeal against the decision of the learned Registrar of the High Court who refused the application for stay of proceedings pending the reference of dispute between the defendant and the plaintiffs to arbitration pursuant to s. 6 of the Arbitration Act 1952.

Held:

[1] In an application pursuant to s. 6 of the Arbitration Act 1952, the Court has a discretion whether or not to grant stay. The language of s. 6 of the said Act is such that if the party who opposes the application for stay can show sufficient reason why the matter should not go to arbitration, the Court should not normally grant stay.

[2] In this case, nowhere, at the time of the commencement of proceedings in Court, has the defendant indicated that they are 'ready and willing' to arbitrate on the matter or dispute. There is no reference at all in the contemporaneous correspondence for a desire or even intention on the part of the defendant to refer the dispute to arbitration bearing in mind both sides have the full advantage of legal advice. Therefore, one of the conditions precedent as envisaged in s. 6 of the said Act has not been satisfactorily shown.

[3] In the injunction proceeding heard before Anuar J. not only did the defendant file an

a affidavit in opposing it but also raised preliminary objection as to the Court's jurisdiction which was subsequently dismissed and failed to set aside the order of injunction. This is definitely "a step taken in the proceedings" by the defendant.

b [4] In the light of the above enunciated principles, the defendant's appeal was dismissed as the learned Senior Assistant Registrar had exercised proper and judicious discretion based on the settled principle of laws to refuse the stay of proceedings in the High Court, Kuala Lumpur to refer the dispute to the arbitration tribunal for determination.

c [Application to stay proceedings refused. Appeal against decision of SAR dismissed].

[Editors Note: The defendant has appealed to the Supreme Court vide Civil Appeal No. 02-542-92].

d

Cases referred to:

Perbadanan Kemajuan Negeri Perak v. Asean Security Paper Mill Sdn. Bhd. [1991] 3 MLJ 309 (**refd**)

Forest Development Sdn. Bhd. v. Syarikat Permodalan dan Perusahaan Pahang Bhd. [1981] 2 MLJ 285 (**refd**)

e

Heyman v. Darwins Ltd. [1942] AC 356 (**refd**)

Roussel-Uclaf v. G.D. Searle and Co. Ltd. [1978] 1 Lloyd's Rep 225 (**not foll**)

Adams v. Catley [1892] 66 LT 687 (**refd**)

Dooley v. The London Assurance [1872] IL TR 22 (**fol**)

Wong Lok Khiam v. Dato' Peter Lo Su Yin & Ors. [1972] 1 MLJ 176 (**refd**)

f

D & C Finance Bhd. v. The Overseas Assurance Corp. Ltd. [1989] 3 MLJ 240 (**not foll**)

Subal Chandra v. Mohd. Ibrahim AIR [1943] C 484 (**refd**)

Evans v. Bartlam [1937] AC 473; [1937] 2 All ER 646 (**refd**)

Kiu May Construction Co. Ltd. v. Wai Cheong Co. Ltd. [1985] 29 BLR 137 (**refd**)

g

Scott v. Avery [1856] 5 HLC 811; 10 ER Rep 1121 (**refd**)

Legislation referred to:

Arbitration Act 1952, s. 6

Other sources referred to:

Arbitration, Paruck's

h

Russell on the Laws of Arbitration (20th Edn.) by Walton and Victoria:

The Law and Practice of Commercial Arbitration in England (2nd Edn.) by Mustill and Boyd

For the plaintiff - G. Sri Ram (Philip Choong with him); M/s. Philip Choong & Co.

i

For the defendant - Vinayak Pradhan (Y.Y. Chee with him); M/s. Shaik Shatar Cheah Tan & Lee

JUDGMENT

Ee Chin Seng JC:

The defendant, Seloga Jaya Sdn. Bhd. was appointed by the Ministry of Defence to carry out the development of a project known as Kerja Pembinaan Awam in Kubong, Labuan. By a contract in writing dated 17 January 1991 the defendant appointed the plaintiff as a sub-contractor to manage and complete the overall construction of the said project in accordance with the stipulated provisions and conditions as set out in the main contract.

According to the contention of the plaintiffs, pursuant to the terms of the said agreement they have carried out construction works on the said project and delivered materials on site. For that three (3) interim certificates for payment duly certified by the consultant engineers were issued by the Ministry of Defence for payment. The defendant had paid the plaintiff its 95% of the amounts certified under interim certificate No. 1 and 2. Cheque for the sum of RM1,416,000 in respect of amount certified under interim certificate No. 3 dated 28 October 1991 was collected by the defendant from the Ministry of Defence on 14 November 1991. The said cheque was paid into the specific joint account by the defendant on 14 November 1991 and withdrawn on 16 November 1991.

Following that the defendant purportedly by a letter dated 13 November 1991 determined the plaintiff's engagement under the said contract and all rights and benefits conferred on the plaintiff and a valuation of the work done and materials delivered to the site by the plaintiff would be carried out. The plaintiffs have in their statement of claim and in the affidavits in support of the plaintiff's application for injunction averred termination is wrongful and vexatious, null and void which constitute a breach of contract by the defendant.

The plaintiffs had on 21 November 1991 obtained an *ex-parte* interim injunction order restraining the defendant from prohibiting the plaintiff from entering the project site. However, on 2 January 1992 this *ex parte* injunction order dated 21 November 1991 by consent of both parties was discharged on terms as agreed between them.

There was an application for stay of proceedings of the writ of summons filed by the defendant which was dismissed by the learned Senior

- a* Assistant Registrar on 27 March 1992. Following that dismissal order the defendant filed an appeal to the Judge in chambers which was both heard and dismissed by me on 4 November 1992. This dismissal order by me is now the subject matter of an appeal to the Supreme Court. Hence, this ground of judgment concerns that appeal.

- b* This is an appeal (Encl. 30) by the defendant before the judge in chambers against the decision of the learned Senior Assistant Registrar for dismissing their application (Encl. 7) for the stay of these proceedings on the ground that there is an arbitration clause in the contract between the plaintiff and the defendant requiring disputes, differences and questions arising between them to be referred to arbitration. This referral is made pursuant to s. 6 of the Arbitration Act 1952, which confers Court power to stay proceedings where there is submission to arbitration.
- c*
- d*

Section 6 reads as follows:

- e* If any party to an arbitration agreement or any person claiming through or under him commences any legal proceedings against any other party to the arbitration, or any person claiming through or under him, in respect of any matter agreed to be referred to arbitration, any party to the legal proceedings may, before taking any other steps in the proceedings, apply to the Court to stay the proceedings, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement, and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make the order staying the proceedings.
- f*
- g* Defendant's standpoint why matter should be referred to arbitration instead of litigation in Court:
- The defendant's position is that if there is a valid arbitration clause as in this case and the defendant is ready and willing to do everything necessary to commence arbitration for a stay of proceedings the Court will refer to arbitration. Arbitration clause must be given effect and the onus shifts to the plaintiff to show why the matter should not be referred to arbitration. Defendant's affidavit (Encl. 6) avers that the said agreement contains an arbitration clause and also illustrates the differences, disputes and questions arising between the plaintiff and
- h*
- i*

the defendant within the scope of the arbitration clause. The defendant claims to state that he is willing and ready to do all things necessary for the arbitration. The defendant also before taking any other steps in the proceedings has applied to Court for a stay of these proceedings. The defendant has therefore satisfied or complied with the requirements of s. 6 of the Arbitration Act 1952.

Cases cited by defence relevant to arbitration clause

(1) *Perbadanan Kemajuan Negeri Perak v. Asean Security Paper Mill Sdn. Bhd.* [1991] 3 MLJ 309

In the above cited case, defence claims that the first part of the arbitration clause is very similar to the one in our present case. The defence contends further even if the applicant's case is a weak one as perceived by the Court it is no ground to refuse the application to refer the matter to arbitration.

The defendant complained of the severe delay in the completion of the contract work based on the dissatisfaction shown by the Government of Malaysia. This alleged delay was attributed more to the defendant. Such was the basis for the termination of the employment. The plaintiffs claim such termination was wrongful and claim damages which are not quantified. Such disputes are covered under the said arbitration clause including any damages arising out of the breach of contract. In support of that view, the defence relies on the case decided by V.C. George J. in:

(2) *Forest Development Sdn. Bhd. v. Syarikat Permodalan dan Perusahaan Pahang Bhd.* [1981] 2 MLJ 285.

The learned Judge, in the above cited case, held that the act of purporting to terminate the contract raised the dispute which is the scope of the arbitration clause. However, defence does not accept the view of the plaintiff that the act of termination is an act of repudiation of the contract. The defence relies on an English Court of Appeal case of:

(3) *Heyman v. Darwins Ltd.* [1942] AC (at p. 356 per judgment of Viscount Simon LC)

A question of law which arises from disputes is not a ground for refusing the stay of proceedings.

(4)(a) **The Law and Practice of Commercial Arbitration in England** by Mustill.

a (b) **Russel on the Laws of Arbitration** by (20th Edn.) Walton and Victoria:

In another aspect, the defendant disclaim the plaintiffs' contention they (i.e. the defendant) by entering a conditional appearance to oppose the plaintiffs' application for an order of injunction are measures considered steps taken in the proceedings and thus waiving the arbitration clause. Such contention has no meritorious support. The learned authors of a book entitled "**The Law & Practice of Commercial Arbitration in England**" of 2nd Edn. by Mustill and Boyd say that resisting an application for an 'interlocutory injunction by putting in evidence and appearing in Court is not a step'.

d In the book entitled "**Russel on the Law of Arbitration** (20th Edn.) by Walton and Victoria: "the learned authors express the view that filing affidavits and contesting proceedings for an interlocutory injunction is not considered a "step in the proceedings". It further adds that "the statute contemplates some positive act by way of offence on the part of the defendant rather than merely parrying a blow by the plaintiff, particularly where the attack consists of asking for an interlocutory injunction. So long as one makes an application for stay of the proceedings before taking any other steps in the proceedings the right of stay of the proceedings is preserved. This is the judgment in the English case:

f (5) *Roussel-Uclaf v. G.D. Searle and Co. Ltd.* [1978] 1 Lloyd's Rep 225.

g Using the principle in the case cited above, s. 6 of the Arbitration Act 1952, has been complied with by the defendant and there is no question of waiver of the arbitration clause in the agreement. This is particularly so as long as the defendant does not take any offensive steps or actions the defendant is entitled to participate in all interlocutory proceedings in Court provided they have made an application for stay of the proceedings in Court. This is to prevent the plaintiffs from avoiding the arbitration clause simply by taking out any application which would prejudice the defendant if they do not respond.

h *Respondent/Plaintiffs Contention*

(1) To grant or to refuse a stay of proceedings is within the ambit of Court's discretion; and

i

- (2) Before the burden shifts to the plaintiff to show why the matter should not go to arbitration it is for the defendant first to prove or establish that at the time when the proceedings were commenced he was ready to proceed to arbitration.

The principle enunciated in the cited case of *Perbadanan Kemajuan Negeri Perak v. Asean Security Papers* is that it is for the defendant to show that he was at the time of the commencement of the proceedings ready, and willing to arbitrate over the dispute. In addition he must by affidavit show that he is still ready and willing to do so. The applicant/defendant, wishing to go to arbitration, must satisfy both the conditions to earn an order of stay. Any one of the conditions not being satisfied then such application for stay of proceedings should be dismissed. Merely affirming that he is ready and willing is not enough but he must show evidence he is so. This is stated in the said Supreme Court case of *Asean Security Paper Mill* and Mustill and Boyd's book on commercial **Arbitration**. Of course the plaintiff can show that the defendants have no intention to proceed to arbitration i.e. the intention was not manifested. Evidence of such negative intention was seen through the affidavit of the plaintiff dated 14 April 1992, that is, the letter dated 13 November 1991, that is, 8 days before the issue of writ of summons. This letter mentions the termination under a specific clause in the contract agreement but expresses no desire and readiness to go to arbitration. Thus, under such circumstances the burden on the defendant has not been discharged.

The phrase 'ready and willing' is found at page 476 at para (d)(i) of Mustill and Boyd's book on commercial **Arbitration**, (2nd Edn.). It states that:

The applicant must show that he is ready and willing to do all things necessary to the proper conduct of the arbitration. This requirement relates both to the time when the proceedings were commenced and to the time when the Court is called on to exercise its discretion. Evidence that the applicant is ready and willing must be furnished by affidavit.

The above statement draws support from an old case of *Adams v. Catley* [1892] 66 LT 687. Basically the underlining principle is that a stay will not be granted if the applicant has taken steps in the proceedings. The applicant must

- a** unequivocally elect to have the dispute decided by arbitration.

Two other cases cited by respondent/plaintiff concerning the reference to arbitration on disputes between parties are:

- b** (1) *Perbadanan Kemajuan Negeri Perak v. Asean Security Paper Mill Sdn. Bhd.*
(2) *Dooley v. The London Assurance* [1872] IL TR 22 The Irish Law Times: Ct. of Appeal at Exchequer

- c** These two cases cited above the Courts there recognized that the arbitration proceeding pursuant to the arbitration clause can be used as an engine of delay. On the issue of delay the Supreme Court in the *Asean Security Paper* case makes an apt concluding observation at the end of the judgment in which it reiterate

- d** ... contractual provisions for arbitration can sometimes be abused... surely it is not the intention of s. 6 of the Act to confer on a defendant the privilege of delaying proceedings to enable him to put off the day of judgment indefinitely. It should be the duty of everyone involved to see that the matter be expeditiously resolved.
e

- f** Evidence of readiness and willingness *ante litem mortem* is absent here in this case. It is one of the conditions precedent recognised by the Supreme Court in the *Asean Security Paper Mill* case. A writ in this case was issued on 21 November 1991 and the earliest correspondence was Enclosure 24 at page 163 of the affidavit of Quah Chong Peng dated 14 April 1992. Page 163 is dated 12 November 1991, 9 days before the issue of the writ. At that time the appellant and the respondent were enjoying the benefit of legal advice. The letter from M/s. K.C. Lim, solicitor for the respondent, shows that there is already a dispute between parties at that time. A day later that is, 13 November 1991, the applicant wrote to the respondent terminating the employment. From this it reveals that the appellant was already prepared to go for litigation. Nowhere was it stated that they are ready and willing to arbitrate on the matter or dispute. Thus it can be seen that one of the conditions under s. 6 of the Arbitration Act has not been satisfied. Therefore, the learned SAR was correct in exercising the discretion against the appellant when the application for stay of proceedings was refused.
g
h
i

Salient aspects of the facts of this case as viewed by respondent/plaintiff strengthen the contention that order for stay of proceedings pending reference to arbitration under s. 6 of the Arbitration Act 1952 was properly and correctly refused. They are:

- (a) Both sides have had the benefit of legal advice.
- (b) All contemporaneous correspondence do not reveal a desire or intention to arbitrate or even referring to arbitration.
- (c) At this stage of the O. 14 action the appellant is delaying the action by relying on the arbitration clause. There was no *bona fide* been intention and if there was it should have shown long ago;

(d) *Steps taken in the proceeding:*

In this case the appellant did not merely file affidavit to oppose the injunction before another judge, Anuar J., but also appeared at that hearing in which a preliminary objection was raised by them as to its jurisdiction which was dismissed. In short there was an attempt to set aside the injunction on a preliminary point. This is considered "a step taken in the proceedings" and not merely defending a blow. This proposition can be found in the case of *Wong Lok Khiam v. Dato' Peter Lo Su Yin & Ors.* [1972] 1 MLJ page 176.

Gist of Replies by Counsel for the defendants

- (1) The Court is to exercise discretion on legal principle whether to grant an order of stay of proceedings under s. 6 of the Arbitration Act 1952.
- (2) Although it is an appeal to the judge in chambers against the decision of the learned SAR, it is treated as if it comes before the Court for the first time.
- (3) This Court is bound by the decision of the Supreme Court in the case of *Asean Security Paper Mill*;
- (4) Counsel admits that weight must be given to the decision of the Registrar but could only do so based on reasoned judgment. Since no written judgment was given by SAR no weight should be attached.
- (5) The condition precedent of "ready and willing to go to arbitration in accordance with s. 6 of the Arbitration Act 1952 has been shown in para 6 of Enclosure 6. It is for the plaintiff to show

a otherwise. In this aspect, the case of *D & C Finance Bhd. v. The Overseas Assurance Corp. Ltd.* [1989] 2 CLJ page 598 held that the plaintiff must give reasons or evidence to show that the defendant was not ready and willing to refer the dispute to arbitration. Merely denying is not sufficient.

b (6) The defence considers the word 'claim' used in the letter of page 167 of Enclosure 24 cannot be taken to mean the statement of claim. There must be a claim instituted against the defendant before the defendant invokes the arbitration clause. Confronted with this 'claim' for the first time was when defendant was first served with the writ.

c (7) The defence quotes Paruck's **Arbitration Act** page 509:

d "Mere inaction prior to the commencement of the legal proceedings cannot be construed as want of readiness and willingness to go to arbitration" and states that there was silence on the part of the defendant but it did not preclude them from raising an arbitration clause;

e (8) The defence alleges that the plaintiff's action in rushing to Court has the effect of an attempt to deprive the defendant of their rights of arbitration. However, learned counsel Encik Sri Ram distinguished the facts of the *Asean Security Paper Mill* case from our present case in that there was no dispute in the cited case whereas there exists one in our present case. There is no question on the part of the plaintiff rushing to Court but to obtain an order of injunction which the arbitrator has no power to give;

(9) Participation in the injunction proceeding is not a waiver and more so when an application for stay had already been filed by the defendant.

g Note:

Learned Counsel Encik Sri Ram rebutted the above principle in Paruck's **Arbitration** which was cited from an Indian High Court whereas the policy of Malaysian Court is a preference of UK cases over Indian cases. Hence, *Dooley's* case should prevail over the *Calcutta* case of *Subal Chandra v. Mohd. Ibrahim* [1945] AIR 484.

h *Grounds for dismissal of appeal against decision of the SAR*

i (1) This appeal arises from the decision of the learned SAR who refused the application for stay of proceedings pending the reference of

dispute between parties to arbitration pursuant to s. 6 of the Arbitration Act 1952. Though it comes in the form of an appeal it does take the shape and style of a re-hearing before the judge in chambers. Whatever it is, due weight should be given to the decision of the learned SAR who had exercised his or her discretion in refusing the order of stay. Such view can be found in the cited cases of *Evans v. Bartlam* [1937] AC 473; [1937] 2 All ER 646 and *Kiu May Construction, Co. Ltd. v. Wai Cheong Co. Ltd.* [1985] 29 BLR 137. This is to say in my view, though such decision of SAR is definitely not binding on this Court, it deserves this Court's consideration and acceptance if such exercise of discretion is correct based on judicious and judicial principle. There is no evidence to show otherwise in our present case to warrant a total disregard of that decision.

(2) The defendant/appellant's application for stay of proceedings pending reference to the arbitration is under s. 6 of the Arbitration Act 1952.

Settled principles of law on the invocation and use of arbitration clause

Primarily, the case of *Scott v. Avery* [1856] 5 HLC 811; 10 ER Rep 1121 has set down a well settled principle of law that parties cannot by contract oust the jurisdiction of the Courts but parties may by contract covenant that no right of action shall accrue until a third person e.g. the arbitrator has decided on any difference which arises between the parties.

It is thus logical to say that when parties have agreed to refer disputes for arbitration and the Court is satisfied that a dispute exists, but one of the parties to the contract convenes an action to have the matter determined by the Court the *prima facie* position of the Court is to stay the proceedings and allow the parties to proceed to the tribunal to which they both have agreed in their contract. In short the Court is inclined to give effect to the wishes of parties in the arbitration clause i.e. referral to the arbitration tribunal.

Enunciated Principles in the Supreme Court case of *Perbadanan Kemajuan Negeri Perak v. Asean Security Paper Mill Sdn. Bhd.* [1991] 3 CLJ 2400 with regard to arbitration clause under s. 6 of the Arbitration Act. 1952

In the above case it was held, *inter alia*,

(1) The words in s. 6 of the Arbitration Act 1952 namely, "in respect of any matter agreed to be

a referred to arbitration", "if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement", and that the applicant was at the time when the proceedings were commenced and "still remains ready and willing to do all things necessary to the proper conduct of the arbitration" constitute the necessary conditions before an order of stay is granted.

(2) In an application pursuant to s. 6 of the Arbitration Act, the Court had a discretion whether or not to grant stay. The language of s. 6 of the Act is such that if the party opposing the application for stay can show sufficient reason why the matter should not go to arbitration, the Court should not normally grant stay.

In the light of the above enunciated principles I am of the considered view that the learned SAR had exercised proper and judicious discretion based on the settled principle of laws to refuse the stay of proceedings in the High Court, Kuala Lumpur to refer the dispute to the arbitration tribunal for determination. My basis for saying so are as follows:

(i) The defendant, in order to qualify for going to arbitration to resolve disputes between parties under s. 6 of the Arbitration Act 1952, must satisfy the Court that they are ready and willing to do all things necessary to the proper conduct of the arbitration before an order of stay is granted. This constitutes the necessary condition precedent.

The exchange of correspondence between parties in this case shows the intention and conduct of parties. The writ was issued on 21 November 1991 and there was correspondence on 12 November 1991 i.e. 9 days before the issue of writ. That was the letter of default and from the respondent solicitor's letter of M/s. K.C. Lim, Teh which reveals that there was already in existence a dispute between them. A day after that i.e. 13 November 1991 the applicant/defendant wrote to the respondent terminating the employment. From this letter onwards i.e. notice of termination it shows that the defendant/appellant was already prepared to go for litigation. Therefore, up to this point the burden has not yet shifted to the plaintiff to show why matters should not go to arbitration simply because the defendant/applicant have failed to establish that

at the time of the commencement of the proceedings they were "ready and willing" to proceed to arbitration. Mere affirming on oath that they are "ready and willing to do all things necessary for the arbitration" is not sufficient.

- (ii) Nowhere, at the time of the commencement of proceedings in Court, have the defendant/appellant indicated that they are "ready and willing" to arbitrate on the matter or dispute. There is no reference at all in the contemporaneous correspondence for a desire or even intention on the part of the defendants/appellants to refer the dispute to arbitration bearing in mind both sides have the full advantage of legal advice. Therefore, one of the conditions precedent as envisaged in s. 6 of the Act and discussed in the *Asean Security Paper Mill* case has not been satisfactorily shown.

- (iii) In accordance with terms of the agreement so far the defendant had paid to the plaintiff/respondent in 95% of the amounts certified interim certificates No. 1 and 2 but for certified interim certificate No. 3 dated 28 October 1991 amounting to RM1,416,000 for which a cheque was collected from the Ministry of Defence, the employer on 14 November 1991 by the defendant this was not done. This sum was credited into the joint account but withdrawn on 16 November 1991. Thus the need to terminate the employment of the defendant on 14 November 1991, the day of collection of the 3rd certified interim payment is put in grave doubt as it appears to have the dubious intention of depriving the plaintiffs of their rightful share of the portion of this said sum of money for work which had been satisfactorily done and approved. It is for the trial Judge to determine whether the termination was right or wrongful at a subsequent breach of contract proceeding.

- (iv) *Steps taken in the proceedings*

It is not correct for defence to say that appearance in the injunction proceeding and resisting is just a defence to ward off the blow by the plaintiff. In that injunction proceeding heard before Anuar J. not only the defendant file an affidavit in opposing it but also raised preliminary objection as to the Court's jurisdiction which was subsequently dismissed and failed to set aside

a the order of injunction. This is definitely a "step taken in the proceedings" by the defendant.

b After the unsuccessful attempt before the learned Judge Anuar J. to set aside the injunction, the defendants now resort to the provisions of s. 6 of the Arbitration Act 1952, with a view to stay the proceedings. It is too late in the day to do so and not *bona fide* in intention. Obviously the defendants want to have two bites at the same cherry. Steps in the proceedings have already been taken by them.

c In view of the above I dismiss the defendants/appellant's appeal against the SAR's decision in refusing the order of stay of the proceedings.

d

e

f

g

h

i